

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

RICHARD ELLENBARGER

PLAINTIFF

v.

CIVIL NO. 04-5245

JO ANNE B. BARNHART, Commissioner
Social Security Administration

DEFENDANT

J U D G M E N T

Now on this 22d day of September 2005, comes on for consideration the Report and Recommendation dated August 15, 2005, by the Honorable Beverly Stites Jones, United States Magistrate Judge for the Western District of Arkansas. Ten (10) days have passed without objections being filed by the parties. The Court has reviewed this case, and being well and sufficiently advised, finds that the Report and Recommendation is proper and should be adopted in its entirety. Accordingly, the Court hereby adopts the Report and Recommendation, reverses the decision of the Commissioner, and remands this case to the Commissioner for further consideration pursuant to sentence four of 42 U.S.C. § 405(g).

If plaintiff wishes to request an award of attorney's fees and cost under the Equal Access to Justice Act (EAJA) 28 U.S.C. § 2412, an application may be filed up until 30 days after the judgment becomes "not appealable" i.e., 30 days after the 60-day time for appeal has ended. *See Shalala v. Schaefer*, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993); 28 U.S.C. §§ 2412(d)(1)(B), (d)(2)(G).

IT IS SO ORDERED.

U. S. DISTRICT COURT.
WESTERN DISTRICT ARKANSAS
FILED



HON. JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE

SEP 22 2005

CHRIS R. JOHNSON, CLERK

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BY


DEPUTY CLERK